Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (MP).

Criminal Appeal No. 715 /97.

APPELLANTS. (IN JAIL).

1. Bahal Agaria S/o.Chandrabhan Agaria, age 55 years.
2. Timani Agaria S/o. Bahal Agaria, age 25 years.
3. Ranglal Agaria, S/o. Baljor Agaria, age 20 years.
4. Balgovind Agaria S/o. Baljor Agaria, age 23 years

All R/o. village- Kishori PS-Sonhat, Distt- Sarguja, MP.

4507

Filed on 31397

Advocate

31330

Regd. A.R.

-Versus-

RESPONDENT.

State of M.P. through PS-Sonhat, Distt- Sarguja, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF CRIMINAL PROCEDURE-1973.

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.715/97

Bahal Agaria and others

vs.

State of M.P. (C.G.)

JUDGMENT

Per Hon.R.S. Garg, J :

The appellants being aggrieved by the judgment dated 25-2-1997 passed in Sessions Trial No.345/96 by the learned Addl.Sessions Judge, Baikunthpur(Sarguja) convicting the appellants no.1 to 3 under Section 323 IPC and sentencing them to undergo R.I. for one year and pay fine of Rs.200/- each, in default of payment of fine, the defaulter to go further R.I. for one month, and convicting the appellant no.4 under Section 307 I.P.C. and sentencing him to undergo R.I. for seven years and pay fine of Rs.1000/-, in default of payment of fine to undergo further R.I. for one year, have preferred this appeal.

2. The prosecution case in brief is that on 26-6-1996 at about 6.00 p.m. victim Pawan Sai and one Rajbali went to the house of accused.While Rajbali was preparing the drink, accused Bahal asked the victim to graze his cattle, on which the victim Pawan Sai told him that he himself has given his bullocks to another person for grazing,therefore, he would not graze the cattles of accused Bahal, on this accused Bahal abused the victim Pawan Sai and caused him an injury by means of a lathi on his left hand. He also called the other appellants. Pawan Sai tried to flee away from the spot but all the four apprehended him and caused him injuries.

Balgovind/who was armed with a farsa caused him injuries on the head while the other three caused him injuries by lathi. After hearing the alarms raised by the victim, Tilakram, Shivprasad and others came to the spot. Seeing the on-coming persons, the accused persons fled away, thereafter the victim was taken to the police station where he lodged the first information report (Ex.P/1). He was referred to the hospital for his medical report and repair of the injuries. The doctors after examining the victim informed the police that the injury no.1 on the head of the victim was dangerous to life. After collecting the material, the prosecution agency filed the challan against the accused persons, the accused were put to trial, after recording the evidence and hearing the parties the trial court convicted and sentenced accused persons as referred to above.

3. The prosecution agency has examined as many as twelve witnesses in support of its case while the accused had examined two persons in their defence.

4. Learned counsel for the appellants submits that the appellants have been falsely implicated and as there is no legal evidence against them, each of the appellant deserves to be acquitted.

5. Learned counsel for the State on the other side submits that from the statements of the prosecution witnesses, it would clearly appear that the victim had suffered injury on his head and the defence witnesses are not reliable. He submits that the conviction is in accordance with law and the sentences do not call for any interference.

6. I have gone through the statements of the prosecution witnesses, especially the statements of P.W.1 Pawan Sai, P.W.2 Tilakram, P.W.3 Shalok, P.W.4 Shiv Prasad, P.W.5 Rambai and P.W.8 Rajbali. These witnesses have corroborated each other. From the statements of Pawan Sai, it would clearly appear that the assault was opened on him by one Bahal while the other accused persons came to the spot subsequently. From the statements of these witnesses, it would appear that Balgovind was armed with a farsa and said Balgovind caused an injury by said farsa on the left side of the head. In the statements of the victim and the other eye witnesses, nothing could be brought on record to show or suggest that they are unreliable. The witnesses have supported each other on the material points.

7. P.W.6 Dr.N.C. Rai has first examined the victim. He has found one cut injury on the head of the victim and some other simple injuries on the left shoulder, right knee, yet another injury on the right knee, some swelling on the base of the thumb and complaint of pain in the thighs. According to the said doctor, barring injury no.1 found on the head of the victim, the other injuries were simple in nature.

8. From the statements of the other witnesses, it would clearly appear that they had taken part in the investigation, preparation of the memorandums and discovery of the articles and particular facts.

9. After going through the entire records, I am unable to hold that the prosecution failed in proving its case and the trial court erred in convicting the accused persons. The findings recorded by the trial court are hereby confirmed.

10. At this stage, learned counsel for the accused persons submits that the appellants no.1 to 3 have remained in jail for more than six months and as Section 323 I.P.C. does not prescribe for any mandatory sentence, the sentence may be reduced to the ~~xxxx~~ period already undergone. He further submits that accused Balgovind was taken into custody on 27-6-1996, he remained in jail as an undertrial prisoner upto 25-2-1997 and since thereafter is undergoing the sentence as a convict and during this period of 4½ years he must have earned some remission, therefore, the sentence be reduced to the period already undergone.

11. I have heard the parties.

12. From the records, it appears that accused Bahal, Timani, Ranglal and Balgovind were taken into custody on 27-6-1996. The records of the court below show that accused Bahal and Timani were directed to be released on bail on 1-1-1997. Till that date, accused Ranglal was also produced from the custody and thereafter he personally appeared in the Court. From these proceedings, it would appear that accused Bahal, Timani and Rangilal remained in jail as undertrial prisoners for a period of six months and six days.

13. Taking into consideration the totality of the circumstances and the period which has been undergone by the appellants no.1 Bahal, no.2 Timani andno.3 Ranglal, I reduce the jail sentence to the period already undergone by them, however, I maintain the fine and default sentence. If the fine amount is recovered, the total amount be paid to the victim as compensation after due verification.

14. So far as accused Balgovind is concerned, the

records show that from 27-6-1996 to 25-2-1997 i.e. for a period of eight months, he remained in jail as an undertrial prisoner and with effect from 25-2-1997 he is undergoing the sentence as a convict. The appellant no.4 is in jail as a convict for four years and seven months. During this period, he must have earned more than one year as remission. If the said period of remission is added to the period already undergone by the accused, it would appear that he has undergone more than six years jail sentence.

15. In the interest of justice and taking into consideration the totality of the circumstances, I consider present to be a fit case where the jail sentence awarded to the appellant no.4 should be reduced to the period already undergone by him. It is accordingly done. While maintaining the fine amount and the default sentence awarded to Balgovind, the substantive jail sentence awarded to him is reduced to the period already undergone.

16. Appellants no.1 to 3 were ordered to be released on bail. If they have availed the bail order granted in their favour, then their bail bonds are discharged. If they have not deposited the fine amount, they may deposit the same within two months from today, otherwise the Court may draw proper proceedings against them. If the appellants no.1 to 3 have not availed the bail order issued in their favour, and have already undergone the jail sentences and the default sentences, then nothing further would be required to be done in their case.

17. Appellant no.4 be immediately released, if not required in any other case. He may deposit the fine amount

within a period of three months. If because of any additional remission given to him by the State Govt. he has already undergone the substantive jail sentence, then he would only be required to deposit the fine amount which on realisation shall be paid to complainant.

18. The appeal to the extent indicated above is allowed.

Sd/-
R.S. Garg
Judge

24-9-2001.

H/- (1+2)